

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the assignment in case of the following:

(i) The Agency purchased and is holder of a loan that was assigned by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate forms used in the assignment.

(4) The guaranteed portion of the loan may not be assigned by the lender until the loan has been fully disbursed to the borrower.

(5) The lender is not permitted to assign any amount of the guaranteed or unguaranteed portion of the loan to the applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's assignment of the guaranteed portion of the loan, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan assigned.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must assign the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The Guarantee or Assignment of Guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the Assignment of Guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

[70 FR 56107, Sept. 26, 2005]

PART 763 [RESERVED]

PART 764—DIRECT LOAN MAKING

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted.

Subpart A—Overview

§ 764.1 Introduction.

(a) *Purpose.* This part describes the Agency's policies for making direct FLP loans.

(b) *Types of loans.* The Agency makes the following types of loans:

- (1) FO, including Downpayment loans;
- (2) OL, including Youth loans;
- (3) EM; and
- (4) CL.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

§ 764.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 764.3–764.50 [Reserved]

Subpart B—Loan Application Process

§ 764.51 Loan application.

(a) A loan application must be submitted in the name of the actual operator of the farm. Two or more applicants applying jointly will be considered an entity applicant. The Agency will consider tax filing status and other business dealings as indicators of the operator of the farm.

(b) A complete loan application, except as provided in paragraphs (c) through (f) of this section, will include:

(1) The completed Agency application form;

(2) If the applicant is an entity:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement from each member of the entity;

(iii) A current financial statement from the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of

incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;

(v) In the form of married couples applying as a joint operation, items (i) and (iv) will not be required. The Agency may request copies of the marriage license, prenuptial agreement or similar documents as needed to verify loan eligibility and security. Items (ii) and (iii) are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication.

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm;

(4) The last 3 years of farm financial records, including tax returns, unless the applicant has been farming less than three years;

(5) The last 3 years of farm production records, unless the applicant has been farming less than 3 years;

(6) Except for CL, documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;

(7) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(8) Verification of all non-farm income;

(9) A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(10) A legal description of the farm property owned or to be acquired and, if applicable, any leases, contracts, options, and other agreements with regard to the property;

(11) Payment to the Agency for ordering a credit report on the applicant;

(12) Verification of all debts;

(13) Any additional information deemed necessary by the Agency to ef-

fectively evaluate the applicant's eligibility and farm operating plan;

(14) For EM loans, a statement of loss or damage on the appropriate Agency form;

(15) For CL only, a conservation plan as defined in § 761.2 of this chapter; and

(16) For CL only, and if the applicant wishes to request consideration for priority funding, plans to transition to organic or sustainable agriculture when the funds requested will be used to facilitate the transition.

(c) For a Lo-Doc OL request, the applicant must:

(1) Be current on all payments to all creditors including the Agency (if an Agency borrower);

(2) Have not received primary loan servicing on any FLP debt within the past 5 years; and

(3) Meet one of the following sets of criteria:

(i) The loan requested is \$50,000 or less and the total outstanding Agency OL loan debt at the time of loan closing will be less than \$100,000; or

(ii) The loan requested is to pay annual operating expenses and the applicant is an existing Agency borrower who has received and timely repaid at least two previous annual OL loans from the Agency.

(4) Submit items (1), (2), (7), (9), and (11) of paragraph (b) of this section. The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.

(d) For a CL Program streamlined application, the applicant must meet all of the following:

(1) Be current on all payments to all creditors including the Agency (if currently an Agency borrower).

(2) Have not received primary loan servicing on any FLP debt within the past 5 years.

(3) Have a debt to asset ratio that is 40 percent or less.

(4) Have a balance sheet that indicates a net worth of 3 times the requested loan amount or greater.

(5) Have a FICO credit score from the Agency obtained credit report of at least 700. For entity applicants, the FICO credit score of the majority of

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the individual members of the entity must be at least 700.

(6) Submit the following items:

(i) Items specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(7), (b)(11), (b)(15), and (b)(16) of this section.

(ii) A current financial statement less than 90 days old, and

(iii) Upon Agency request, other information specified in paragraph (b) of this section necessary to make a determination on the loan application.

(e) For a youth loan request:

(1) The applicant must submit items (1), (7), and (9) of paragraph (b) of this section.

(2) Applicants 18 years or older, must also provide items (11) and (12) of paragraph (b) of this section.

(3) The Agency may require a youth loan applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.

(f) The applicant need not submit any information under this section that already exists in the applicant's Agency file and is still current.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

§ 764.52 Processing an incomplete application.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.

§ 764.53 Processing the complete application.

Upon receiving a complete loan application, the Agency will:

(a) Consider the loan application in the order received, based on the date the application was determined to be complete.

(b) Provide written notice to the applicant that the application is complete.

(c) Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.

(d) Except for CL requests, if based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program as specified in § 762.110(h) of this chapter.

(e) In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

(f) If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

§ 764.54 Preferences when there is limited funding.

(a) *First priority.* When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.

(b) *Secondary priorities.* If two or more applications were received on the same date, the Agency will give preference to:

(1) First, an applicant who is a veteran of any war;

(2) Second, an applicant who is not a veteran, but:

(i) Has a dependent family;

(ii) Is able to make a downpayment;

or

(iii) Owns livestock and farm implements necessary to farm successfully.

(3) Third, to other eligible applicants.

§§ 764.55–764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

§ 764.101 General eligibility requirements.

The following requirements must be met unless otherwise provided in the eligibility requirements for the particular type of loan.

(a) *Controlled substances.* The applicant, and anyone who will sign the promissory note, must not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter.

(b) *Legal capacity.* The applicant, and anyone who will sign the promissory note, must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.

(c) *Citizenship.* The applicant, and anyone who will sign the promissory note, must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.

(d) *Credit history.* The applicant must have acceptable credit history demonstrated by debt repayment.

(1) As part of the credit history, the Agency will determine whether the applicant will carry out the terms and conditions of the loan and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(2) When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's credit worthiness.

(3) A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. The following cir-

cumstances, for example, do not automatically indicate an unacceptable credit history:

(i) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR part 766.

(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(iii) "No history" of credit transactions by the applicant.

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment when the applicant can satisfactorily demonstrate that the adverse action or delinquency was caused by circumstances that were of a temporary nature and beyond the applicant's control; or the result of a refusal to make full payment because of defective goods or services or other justifiable dispute relating to the purchase or contract for goods or services.

(e) *Availability of credit elsewhere.* Except for CL, the applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:

(1) Loan amounts, rates, and terms available in the marketplace; and

(2) Property interests, income, and significant non-essential assets.

(f) *Not in delinquent status on Federal debt.* As provided in 31 CFR part 285, except for EM loan applicants, the applicant, and anyone who will sign the promissory note, must not be in delinquent status on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. All delinquent debts, however, will be considered in determining credit history and ability to repay under this part.

(g) *Outstanding judgments.* The applicant, and anyone who will sign the promissory note, must have no outstanding unpaid judgments obtained by the United States in any court. Such

judgments do not include those filed as a result of action in the United States Tax Courts.

(h) *Federal crop insurance violation.* The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(i) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:

(1) Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.

(2) On-the-job training. For example, the applicant is currently working on a farm as part of an apprenticeship program.

(3) Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. The farming experience must have been obtained within the last 5 years.

(j) *Borrower training.* The applicant must agree to meet the training requirements in subpart K of this part.

(k) *Operator of a family farm.* Except for CL:

(1) The applicant must be the operator of a family farm after the loan is closed.

(2) For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must be operators of a family farm.

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm;

(ii) All of the members of the entity are related by blood or marriage; and

(iii) All of the members are or will become operators of the family farm; and

(4) If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(l) *Entity composition.* If the applicant is an entity, the entity members are not themselves entities.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

§ 764.102 General limitations.

(a) Limitations specific to each loan program are contained in subparts D through I of this part.

(b) The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter.

(c) The funds from the FLP loan must be used for farming operations located in the United States.

(d) The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

(e) Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter.

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

§ 764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through I of this part.

(b) All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except

for EM loans as provided in subpart I of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) An additional amount of security up to 150 percent of the loan amount will be taken when available, except for downpayment loans and youth loans.

(d) The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirements.

(e) The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of \$5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) of this section. This requirement does not apply to downpayment loans, conservation loans, or youth loans.

[72 FR 63298, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008; 75 FR 54015, Sept. 3, 2010]

§ 764.104 General real estate security requirements.

(a) *Agency lien position requirements.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(1) The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

(2) Prior lienholders agree to notify the Agency prior to foreclosure;

(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

(4) Equity in the collateral exists.

(b) *Real estate held under a purchase contract.* If the real estate offered as se-

curity is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate;

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

(4) The purchase contract must not:

(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency's security position or the applicant's ability to repay the loan.

(5) The purchase contract holder must agree in writing to:

(i) Not sell or voluntarily transfer their interest without prior written consent of the Agency;

(ii) Not encumber or cause any liens to be levied against the property;

(iii) Not take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;

(iv) Consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the FLP loan;

(v) Not take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the applicant's obligations under the purchase contract;

(vi) Notify the Agency in writing of any breach by the applicant; and

(vii) Give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(6) If the Agency acquires the applicant's interest under the purchase contract by foreclosure or voluntary conveyance, the Agency will not be deemed to have assumed any of the applicant's obligations under the contract, provided that if the Agency fails to perform the applicant's obligations while it holds the applicant's interest is grounds for terminating the purchase contract.

(c) *Tribal lands held in trust or restricted.* The Agency may take a lien on Indian Trust lands as security provided the applicant requests the Bureau of Indian Affairs to furnish Title Status Reports to the agency and the Bureau of Indian Affairs provides the reports and approves the lien.

(d) *Security for more than one loan.* The same real estate may be pledged as security for more than one direct or guaranteed loan.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.

§ 764.105 General chattel security requirements.

The same chattel may be pledged as security for more than one direct or guaranteed loan.

§ 764.106 Exceptions to security requirements.

Notwithstanding any other provision of this part, the Agency will not take a security interest:

(a) When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;

(b) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;

(c) When the Agency cannot obtain a valid lien;

(d) When the property is the applicant's personal residence and appurtenances and:

(1) They are located on a separate parcel; and

(2) The real estate that serves as security for the FLP loan plus crops and chattels are greater than or equal to 150 percent of the unpaid balance due on the loan;

(e) When the property is subsistence livestock, cash, working capital accounts the applicant uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

(f) On marginal land and timber that secures an outstanding ST loan.

§ 764.107 General appraisal requirements.

(a) *Establishing value for real estate.* The value of real estate will be established by an appraisal completed in accordance with § 761.7 of this chapter.

(b) *Establishing value for chattels.* The value of chattels will be established as follows:

(1) *Annual production.* The security value of annual livestock and crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses, as outlined in the approved farm operating plan.

(2) *Livestock and equipment.* The value of livestock and equipment will be established by an appraisal completed in accordance with § 761.7 of this chapter.

§ 764.108 General insurance requirements.

The applicant must obtain and maintain insurance, equal to the lesser of the value of the security at the time of loan closing or the principal of all FLP and non-FLP loans secured by the property, subject to the following:

(a) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and insurance premiums do not exceed the benefit. The Agency must be listed as loss payee for the insurance indemnity payment or as a beneficiary in the mortgagee loss payable clause.

(b) Real estate security located in flood or mudslide prone areas must be

covered by flood or mudslide insurance. The Agency must be listed as a beneficiary in the mortgagee loss payable clause.

(c) Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available. The Agency must be listed as loss payee for the insurance indemnity payment.

(d) Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for each crop which is a basic part of the applicant's total operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop. The applicant must execute an assignment of indemnity in favor of the Agency for this coverage.

§§ 764.109–764.150 [Reserved]

Subpart D—Farm Ownership Loan Program

§ 764.151 Farm Ownership loan uses.

FO loan funds may only be used to:

(a) Acquire or enlarge a farm or make a down payment on a farm;

(b) Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

(c) Promote soil and water conservation and protection;

(d) Pay loan closing costs;

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

§ 764.152 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be the owner-operator of the farm financed with Agency funds after the loan is closed. In the case of an entity:

(1) The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;

(2) The entity must be authorized to own and operate the farm in the State in which the farm is located;

(3) If the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member of the entity must operate the farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must own and operate the farm.

(d) And in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

(e) And anyone who will sign the promissory note, must satisfy at least one of the following conditions:

(1) Meet the definition of a beginning farmer;

(2) Have not had a direct FO loan outstanding for more than a total of 10 years prior to the date the new FO loan is closed;

(3) Have never received a direct FO loan.

§ 764.153 Limitations.

The applicant must:

(a) Comply with the general limitations established at § 764.102;

(b) Have dwellings and other buildings necessary for the planned operation of the farm available for use after the loan is made.

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§ 764.154 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.

(2) The limited resource Farm Ownership interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(3) If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the Agency will use the Farm Ownership participation rate, available in each Agency office.

(4) The interest rate charged will be the lower of the rate in effect at the time of loan approval or loan closing.

(b) *Terms.* The Agency schedules repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.

§ 764.155 Security requirements.

An FO loan must be secured:

(a) In accordance with §§ 764.103 through 764.106;

(b) At a minimum, by the real estate being purchased or improved.

§§ 764.156–764.200 [Reserved]

Subpart E—Downpayment Loan Program

§ 764.201 Downpayment loan uses.

Downpayment loan funds may be used to partially finance the purchase of a family farm by an eligible beginning farmer or socially disadvantaged farmer.

[72 FR 63298, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008]

§ 764.202 Eligibility requirements.

The applicant must:

(a) Comply with the general eligibility requirements established at § 764.101 and the FO eligibility requirements of § 764.152; and

(b) Be a beginning farmer or socially disadvantaged farmer.

[72 FR 63298, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008]

§ 764.203 Limitations.

(a) The applicant must:

(1) Comply with the general limitations established at § 764.102; and

(2) Provide a minimum downpayment of 5 percent of the purchase price of the farm.

(b) Downpayment loans will not exceed 45 percent of the lesser of:

(1) The purchase price,

(2) The appraised value of the farm to be acquired, or

(3) \$500,000.

(c) Financing provided by the Agency and all other creditors must not exceed 95 percent of the purchase price. Financing provided by eligible lenders may be guaranteed by the Agency under part 762 of this chapter.

[72 FR 63298, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008]

§ 764.204 Rates and terms.

(a) *Rates.* The interest rate for Downpayment loans will be the regular direct FO rate minus 4 percent, but in no case less than 1.5 percent.

(b) *Terms.* (1) The Agency schedules repayment of Downpayment loans in equal, annual installments over a term not to exceed 20 years.

(2) The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 20 years of the loan.

[72 FR 63298, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008]

§ 764.205 Security requirements.

A Downpayment loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106;

(b) Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.

[72 FR 63298, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008]

§§ 764.206–764.230 [Reserved]

Subpart F—Conservation Loan Program

SOURCE 75 FR 54015, Sept. 3, 2010, unless otherwise noted.

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§ 764.231 Conservation loan uses.

(a) CL funds may be used for any conservation activities included in a conservation plan including, but not limited to:

(1) The installation of conservation structures to address soil, water, and related resources;

(2) The establishment of forest cover for sustained yield timber management, erosion control, or shelter belt purposes;

(3) The installation of water conservation measures;

(4) The installation of waste management systems;

(5) The establishment or improvement of permanent pasture; and

(6) Other purposes including the adoption of any other emerging or existing conservation practices, techniques, or technologies.

(b) [Reserved]

§ 764.232 Eligibility requirements.

(a) The applicant:

(1) Must comply with general eligibility requirements specified in § 764.101 except paragraphs (e) and (k) of that section;

(2) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan; and

(3) Must be the owner-operator or tenant-operator of a farm and be engaged in agricultural production after the time of loan is closed. In the case of an entity:

(i) The entity is controlled by farmers engaged primarily and directly in farming in the United States;

(ii) The entity must be authorized to operate a farm in the State in which the farm is located.

(b) [Reserved]

§ 764.233 Limitations.

(a) The applicant must comply with the general limitations specified in § 764.102 except § 764.102(f), which does not apply to applicants for the CL Program.

(b) The applicant must agree to repay any duplicative financial benefits or assistance to CL.

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§ 764.234 Rates and terms.

(a) *Rates.* The interest rate:

(1) Will be the Agency's Direct Farm Ownership rate, available in each Agency office.

(2) Charged will be the lower rate in effect either at the time of loan approval or loan closing.

(b) *Terms.* The following terms apply to CLs:

(1) The Agency schedules repayment of a CL based on the useful life of the security.

(2) The maximum term for loans secured by chattels only will not exceed 7 years from the date of the note.

(3) In no event will the term of the loan exceed 20 years from the date of the note.

§ 764.235 Security requirements.

(a) The loan must be secured:

(1) In accordance with requirements established in §§ 764.103 through 764.106; and

(2) In the order of priority as follows:

(i) By real estate, if available, and then

(ii) By chattels, if determined acceptable by the Agency.

(b) [Reserved]

§§ 764.236–764.250 [Reserved]

Subpart G—Operating Loan Program

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted. Redesignated at 75 FR 54015, Sept. 3, 2010.

§ 764.251 Operating loan uses.

(a) Except as provided in paragraph (b), OL loan funds may only be used for:

(1) Costs associated with reorganizing a farm to improve its profitability;

(2) Purchase of livestock, including poultry, farm equipment, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

(3) Farm operating expenses, including, but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family living expenses;

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(4) Scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

(5) Other farm needs;

(6) Costs associated with land and water development, use, or conservation;

(7) Loan closing costs;

(8) Costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(9) Borrower training costs required or recommended by the Agency;

(10) Refinancing farm-related debts other than real estate to improve the farm's profitability provided the applicant has refinanced direct or guaranteed OL loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA;

(11) Costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years.

(b) Lo-Doc funds approved under:

(1) Section 764.51(c)(3)(i) may be used for any OL purpose except for refinancing debt under paragraph (a)(10);

(2) Section 764.51(c)(3)(ii) may only be used for expenses under paragraph (a)(3).

§ 764.252 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101.

(b) And anyone who will sign the promissory note, except as provided in paragraph (c) of this section, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.

(c) And anyone who will sign the promissory note, may receive direct OL loans to pay annual farm operating and family living expenses, provided that the applicant meets all other applicable requirements under this part, if the applicant:

(1) Received a write-down under section 353 of the Act;

(2) Is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code; or

(3) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FLP loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within 3 years after the designation of such emergency meet this exception.

(d) And in the case of an entity, the entity must be:

(1) Controlled by farmers engaged primarily and directly in farming in the United States; and

(2) Authorized to operate the farm in the State in which the farm is located.

(e) And anyone who will sign the promissory note, may close an OL loan in no more than 7 calendar years, either as an individual or as a member of an entity, except as provided in paragraphs (e)(1) through (4) of this section. The years may be consecutive or non-consecutive, and there is no limit on the number of loans closed in a year. Youth loans are not counted toward this limitation. The following exceptions are applicable.

(1) This limitation does not apply if the applicant and anyone who will sign the promissory note is a beginning farmer.

(2) This limitation does not apply if the applicant's land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and commercial credit is generally not available to such farm operations.

(3) If the applicant, and anyone who will sign the promissory note, has closed direct OL loans in four or more previous calendar years as of April 4, 1996, the applicant is eligible to close OL loans in any three additional years after that date.

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(4) On a case-by-case basis, may be granted a one-time waiver of OL term limits for a period of 2 years, not subject to administrative appeal, if the applicant:

- (i) Has a financially viable operation;
- (ii) And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan; and
- (iii) Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.

§ 764.253 Limitations.

The applicant must comply with the general limitations established at § 764.102.

§ 764.254 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of annual OL loans made for family living and farm operating expenses when planned income is projected to be available.

(i) The term of the loan may not exceed 18 months from the date of the note.

(ii) The term of the loan may exceed 18 months in unusual situations such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established, marketing plans, or recovery from a disaster or economic reverse. In no event will the term of the loan exceed 7 years from the date of the note. Crops and livestock produced for sale will not be considered adequate security for such loans.

(2) The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed 7 years

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from the date of the note. Repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or economic reversal. Loans with balloon installments:

(i) Must have adequate security at the time the balloon installment comes due. Crops, livestock other than breeding stock, or livestock products produced are not adequate collateral for such loans;

(ii) Are only authorized when the applicant can project the ability to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan;

(iii) Are not authorized when loan funds are used for real estate repairs or improvements.

§ 764.255 Security requirements.

An OL loan must be secured:

(a) In accordance with §§ 764.103 through 764.106.

(b) By a:

(1) First lien on all property or products acquired or produced with loan funds;

(2) Lien of equal or higher position of that held by the creditor being refinanced with loan funds.

§§ 764.256–764.300 [Reserved]

Subpart H—Youth Loan Program

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted. Redesignated at 75 FR 54015, Sept. 3, 2010.

§ 764.301 Youth loan uses.

Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4-H, FFA, or a similar organization.

§ 764.302 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101(a) through (g);

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be at least 10 but not yet 21 years of age at the time the loan is closed;

(d) Must reside in a rural area, city or town with a population of 50,000 or fewer people;

(e) Must be recommended and continuously supervised by a project advisor, such as a 4-H Club advisor, a vocational teacher, a county extension agent, or other agriculture-related organizational sponsor; and

(f) Must obtain a written recommendation and consent from a parent or guardian if the applicant has not reached the age of majority under state law.

§ 764.303 Limitations.

(a) The applicant must comply with the general limitations established at § 764.102.

(b) The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed \$5,000.

§ 764.304 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is not available for Youth loans.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* Youth loan terms are the same as for an OL established at § 764.254(b).

§ 764.305 Security requirements.

A first lien will be obtained on property or products acquired or produced with loan funds.

§§ 764.306–764.350 [Reserved]

Subpart I—Emergency Loan Program

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted. Redesignated at 75 FR 54015, Sept. 3, 2010.

§ 764.351 Emergency loan uses.

(a) *Physical losses*—(1) *Real estate losses.* EM loan funds for real estate physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

(i) For any FO purpose, as specified in § 764.151, except subparagraph (e) of that section;

(ii) To establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(iii) To replace land from the farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* EM loan funds for chattel physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

(i) Purchase livestock, farm equipment, quotas and bases, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining and closing a loan that an applicant cannot pay from other sources (e.g., fees for legal, architectural, and other technical services, but not fees for agricultural management consultation, or preparation of Agency forms);

(iii) Repair or replace household contents damaged in the disaster;

(iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Pay essential family living and farm operating expenses, in the case of an operation that has suffered livestock losses not from breeding stock, or losses to stored crops held for sale; and

(vi) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(A) A designated or declared disaster caused the need for refinancing; or

(B) The debts to be refinanced are owed to a creditor other than the USDA.

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(b) *Production losses.* EM loan funds for production losses to agricultural commodities (except the losses associated with the loss of livestock) may be used to:

(1) Pay costs associated with reorganizing the farm to improve its profitability except that such costs must not include the payment of bankruptcy expenses;

(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;

(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(4) Pay borrower training costs required or recommended by the Agency;

(5) Pay essential family living expenses;

(6) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA; and

(7) Replace lost working capital.

§ 764.352 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) Must be an established farmer;

(c) Must be the owner-operator or tenant-operator as follows:

(1) For a loan made under § 764.351(a)(1), must have been:

(i) The owner-operator of the farm at the time of the disaster; or

(ii) The tenant-operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan;

(2) For a loan made under § 764.351(a)(2) or (b), must have been the operator of the farm at the time of the disaster; and

(3) In the case of an entity, the entity must be:

(i) Engaged primarily and directly in farming in the United States;

(ii) Authorized to operate and own the farm, if the funds are used for farm ownership loan purposes, in the State in which the farm is located;

(d) Must demonstrate the intent to continue the farming operation after the designated or declared disaster;

(e) And all entity members must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized commercial lending institutions within reasonable proximity of the applicant as follows:

(1) In the case of a loan in excess of \$300,000, two written declinations of credit are required;

(2) In the case of a loan of \$300,000 or less, one written declination of credit is required; and

(3) In the case of a loan of \$100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(4) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere;

(f) And all entity members in the case of an entity, must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.

(g) Must submit an application to be received by the Agency no later than 8 months after the date the disaster is

declared or designated in the county of the applicant's operation.

(h) For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, which comprises a basic part of an applicant's total farming operation.

(i) For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

(j) Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:

(1) The applicant, including all owners must meet all of the eligibility requirements;

(2) The individual applicant, or all owners of a entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and

(3) The amount of the loan will be based on the percentage of the former farming operation transferred to the applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

(k) Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the applicant for the same purpose from another source.

§ 764.353 Limitations.

(a) EM loans must comply with the general limitations established at § 764.102.

(b) EM loans may not exceed the lesser of:

(1) The amount of credit necessary to restore the farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant as calculated in paragraph (c) of this section.

(c) For production loss loans, the applicant's actual crop production loss will be calculated as follows:

(1) Subtract the disaster yield from the normal yield to determine the per acre production loss;

(2) Multiply the per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.

(d) For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:

(1) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(2) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(3) Add the value of replacement livestock and livestock products for which the applicant provided:

(i) Written documentation of inventory on hand immediately preceding the loss;

(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;

(4) Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;

(5) Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing household contents, not to exceed \$20,000; and

(6) Subtract any other disaster related compensation or insurance indemnities received or to be received by

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the applicant for the loss or damage to the chattel or real estate.

(e) EM loan funds may not be used for physical loss purposes unless:

(1) The physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage was greater than the cost of the insurance; or

(2) The loan is to a poultry farmer to cover the loss of a chicken house for which the applicant did not have hazard insurance at the time of the loss and the applicant:

(i) Applied for, but was unable to obtain hazard insurance for the chicken house;

(ii) Uses the loan to rebuild the chicken house in accordance with industry standards in effect on the date the applicant submits an application for the loan;

(iii) Obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and

(iv) Meets all other requirements for the loan.

(f) EM loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

§ 764.354 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.

(2) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.

(2) The repayment schedule must include at least one payment every year.

(3) EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be re-

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paid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.

(4) EM loans for production losses or physical losses to chattel (including, but not limited to, assets with an expected life between one and 7 years) may not exceed 7 years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.

(5) The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

§ 764.355 Security requirements.

(a) EM loans made under § 764.351(a)(1) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.155(b).

(b) EM loans made under § 764.351(a)(2) and (b) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.255(b).

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106;

(2) The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and

(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.

(d) For loans over \$25,000, title clearance is required when real estate is taken as security.

(e) For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

§ 764.356 Appraisal and valuation requirements.

(a) In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

(b) In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

§§ 764.357–764.400 [Reserved]

Subpart J—Loan Decision and Closing

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted. Redesignated at 75 FR 54015, Sept. 3, 2010.

§ 764.401 Loan decision.

(a) *Loan approval.* (1) The Agency will approve a loan only if it determines that:

(i) The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

(ii) The proposed use of loan funds is authorized for the type of loan requested;

(iii) The applicant has been determined eligible for the type of loan requested;

(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 of this chapter;

(vi) There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(2) The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

(b) *Loan denial.* The Agency will not approve a loan if it determines that:

(1) The applicant's farm operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8 of this chapter;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

(c) *Overtake of an Agency decision by appeal.* If an FLP loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:

(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or

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agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;

(2) Approve a loan for crop production:

(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or

(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the Agency determines the loan can be repaid. The new farm operating plan must reflect any financial issues resolved in the appeal.

(3) Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.

§ 764.402 Loan closing.

(a) *Signature requirements.* Signatures on loan documents are required as follows:

(1) For individual applicants, only the applicant is required to sign the promissory note.

(2) For entity applicants, the promissory note will be executed to evidence the liability of the entity and the individual liability of all members of the entity.

(3) Despite minority status, a youth executing a promissory note for a Youth loan will incur full personal liability for the debt.

(4) A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.

(5) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

(b) *Payment of fees.* The applicant, or in the case of a real estate purchase, the applicant and seller, must pay all filing, recording, notary, lien search, and any other fees necessary to process and close a loan.

(c) *Chattel-secured loans.* The following requirements apply to loans secured by chattel:

(1) The Agency will close a chattel loan only when it determines the Agency requirements for the loan have been satisfied;

(2) A financing statement is required for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;

(3) A new security agreement is required for new loans, as necessary to secure the loan under State law, prior to the disbursement of loan funds.

(d) *Real estate-secured loans.* (1) The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:

(i) For loans of \$10,000 or less;

(ii) As provided in § 764.355 for EM loans;

(iii) When the real estate is considered additional security by the Agency; or

(iv) When the real estate is a non-essential asset.

(2) The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.

(3) The Agency must approve agents who will close FLP loans. Closing agents must meet all of the following requirements to the Agency's satisfaction:

(i) Be licensed in the state where the loan will be closed;

(ii) Not be debarred or suspended from participating in any Federal programs;

(iii) Maintain liability insurance;

(iv) Have a fidelity bond that covers all employees with access to loan funds;

(v) Have current knowledge of the requirements of State law in connection

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with the loan closing and title clearance;

(vi) Not represent both the buyer and seller in the transaction;

(vii) Not be related as a family member or business associate with the applicant; and

(viii) Act promptly to provide required services.

(e) *Disbursement of funds.* (1) Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.

(2) If the loan is not closed within 90 days of loan approval or if the applicant's financial condition changes significantly, the Agency must reconfirm the requirements for loan approval prior to loan closing. The applicant may be required to provide updated information for the Agency to reconfirm approval and proceed with loan closing.

(3) The Agency or closing agent will be responsible for disbursing loan funds. The electronic funds transfer process, followed by Treasury checks, are the Agency's preferred methods of loan funds disbursement. The Agency will use these processes on behalf of borrowers to disburse loan proceeds directly to creditors being refinanced with loan funds or to sellers of chattel property that is being acquired with loan funds. A supervised bank account will be used according to subpart B of part 761 of this chapter when these processes are not practicable.

§§ 764.403–764.450 [Reserved]

Subpart K—Borrower Training and Training Vendor Requirements

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted. Redesignated at 75 FR 54015, Sept. 3, 2010.

§ 764.451 Purpose.

The purpose of production and financial management training is to help an applicant develop and improve skills necessary to:

(a) Successfully operate a farm;

(b) Build equity in the operation; and

(c) Become financially successful and prepared to graduate from Agency financing to commercial sources of credit.

§ 764.452 Borrower training requirements.

(a) The applicant must agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453, or the applicant has previously satisfied the training requirements. In the case of an entity:

(1) Any individual member holding a majority interest in the entity or who is operating the farm must complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;

(2) If one entity member is solely responsible for production or financial management, then only that member will be required to complete training.

(b) When the Agency determines that production training is required, the applicant must agree to complete course work covering production management in each crop or livestock enterprise the Agency determines necessary.

(c) When the Agency determines that financial management training is required, the applicant must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.

(d) An applicant who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, must agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453.

(e) Even if a waiver is granted, the borrower must complete borrower training as a condition for future loans if and when Agency supervision provided in 7 CFR part 761 subpart C reflects that such training is needed.

(f) The Agency cannot reject a request for a direct loan based solely on an applicant's need for training.

(g) The Agency will provide written notification of required training or waiver of training.

§ 764.453 Agency waiver of training requirements.

(a) The applicant must request the waiver in writing.

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(b) The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:

(1) The applicant submits evidence of successful completion of a course similar to a course approved under section § 764.457 and the Agency determines that additional training is not needed; or

(2) The applicant submits evidence which demonstrates to the Agency's satisfaction the applicant's experience and training necessary for a successful and efficient operation.

(c) If the production and financial functions of the operation are shared among individual entity members, the Agency will consider the collective knowledge and skills of those individuals when determining whether to waive training requirements.

§ 764.454 Actions that an applicant must take when training is required.

(a) *Deadline for completion of training.*

(1) If the Agency requires an applicant to complete training, at loan closing the applicant must agree in writing to complete all required training within 2 years.

(2) The Agency will grant a one-year extension to complete training if the applicant is unable to complete training within the 2-year period due to circumstances beyond the applicant's control.

(3) The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.

(4) An applicant who does not complete the required training within the specified time-period will be ineligible for additional direct FLP loans until the training is completed.

(b) *Arranging training with a vendor.* The applicant must select and contact an Agency approved vendor and make all arrangements to begin training.

(c) *Payment of training fees.* (1) The applicant is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.

(2) The payment of training fees is an authorized use of OL funds.

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(3) The Agency is not a party to fee or other agreements between the applicant and the vendor.

(d) *Evaluation of a vendor.* Upon completion of the required training, the applicant will complete an evaluation of the course and submit it to the vendor. The vendor will forward the completed evaluation forms to the Agency.

§ 764.455 Potential training vendors.

The Agency will contract for training services with State or private providers of production and financial management training services.

§ 764.456 Applying to be a vendor.

(a) A vendor for borrower training services must apply to the Agency for approval.

(b) The vendor application must include:

(1) A sample of the course materials and a description of the vendor's training methods;

(2) Specific training objectives for each section of the course;

(3) A detailed course agenda specifying the topics to be covered, the time devoted to each topic, and the number of sessions to be attended;

(4) A list of instructors and their qualifications;

(5) The criteria by which additional instructors will be selected;

(6) The proposed locations where training will take place;

(7) The cost per participant, including cost for additional members of a farming operation;

(8) The minimum and maximum class size;

(9) The vendor's experience in developing and administering training to farmers;

(10) The monitoring and quality control methods the vendor will use;

(11) The policy on allowing Agency employees to attend the course for monitoring purposes;

(12) A plan of how the needs of applicants with physical, mental, or learning disabilities will be met; and

(13) A plan of how the needs of applicants who do not speak English as their primary language will be met.

§ 764.457 Vendor requirements.

(a) *Minimum experience.* The vendor must demonstrate a minimum of 3 years of experience in conducting training courses or teaching the subject matter.

(b) *Training objectives.* The courses provided by a vendor must enable the applicant to accomplish one or more of the following objectives:

(1) Describe the specific goals of the farming operation, any changes required to attain the goals, and outline how these changes will occur using present and projected cash flow budgets;

(2) Maintain and use a financial management information system to make financial decisions;

(3) Understand and use an income statement;

(4) Understand and use a balance sheet;

(5) Understand and use a cash flow budget; and

(6) Use production records and other production information to identify problems, evaluate alternatives, and correct current production practices to improve efficiency and profitability.

(c) *Curriculum.* At least one of the following subjects must be covered:

(1) Business planning courses, covering general goal setting, risk management, and planning.

(2) Financial management courses, covering all aspects of farm accounting and focusing on integrating accounting elements into a financial management system.

(3) Crop and livestock production courses focusing on improving the profitability of the farm.

(d) *Instructor qualifications.* All instructors must have:

(1) Sufficient knowledge of the material and experience in adult education;

(2) A bachelor's degree or comparable experience in the subject area to be taught; and

(3) A minimum of 3 years experience in conducting training courses or teaching.

§ 764.458 Vendor approval.

(a) *Agreement to conduct training.* (1) Upon approval, the vendor must sign an agreement to conduct training for the Agency's borrowers.

(2) The agreement to conduct training is valid for 3 years.

(3) Any changes in curriculum, instructor, or cost require prior approval by the Agency.

(4) The vendor may revoke the agreement by giving the Agency a written 30-day notice.

(5) The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving the vendor a written 30-day notice.

(b) *Renewal of agreement to conduct training.* (1) To renew the agreement to conduct training, the vendor must submit in writing to the Agency:

(i) A request to renew the agreement;

(ii) Any changes in curricula, instructor, or cost; and

(iii) Documentation that the vendor is providing effective training.

(2) The Agency will review renewal requests in accordance with § 764.457.

§ 764.459 Evaluation of borrower progress.

(a) The vendor must provide the Agency with a periodic progress report for each borrower enrolled in training in accordance with the agreement to complete training. The reports will indicate whether the borrower is attending sessions, completing the training program, and demonstrating an understanding of the course material.

(b) Upon borrower completion of the training, the vendor must provide the Agency with an evaluation of the borrower's knowledge of the course material and assign a score. The following table lists the possible scores, the criteria used to assign each score, and Agency consideration of each score:

Score	Criteria used to determine score	Agency consideration
1	<p>If the borrower:</p> <ul style="list-style-type: none"> • Attended sessions as agreed, • Satisfactorily completed all assignments, and • Demonstrated an understanding of the course material.. 	Training requirement associated with course is complete.

Score	Criteria used to determine score	Agency consideration
2	If the borrower: <ul style="list-style-type: none"> • Attended sessions as agreed, and • Attempted to complete all assignments, but • Does not demonstrate an understanding of the course material.. 	Training requirement associated with course is complete. Additional Agency supervision may be necessary.
3	If the borrower did not: <ul style="list-style-type: none"> • Attend sessions as agreed, or • Attempt to complete assignments, or • Otherwise make a good faith effort to complete the training.. 	Training requirement associated with course is not complete. The borrower is ineligible for future direct loans until the training is completed.

PART 765—DIRECT LOAN SERVICING—REGULAR

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Subpart J—Deceased Borrowers

- 765.451 Continuation of FLP debt and transfer of security.
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 765.453–765.500 [Reserved]

Subpart K—Exception Authority

- 765.501 Agency exception authority.
 AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.
 SOURCE: 72 FR 63309, Nov. 8, 2007, unless otherwise noted.